

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

[illegible]

Docket No. 180,426

ORDER

ON the 25th day of January, 1994, the application of the claimant for review by the Workers Compensation Appeals Board of a Preliminary Order of Administrative Law Judge Alvin E. Witwer on December 13, 1993, came on for oral argument by telephone conference.

APPEARANCES

The claimant appeared by and through her attorney, Leah Brown Burkhead, of Mission, Kansas. The respondent and its insurance carrier appeared by and through their attorney, James E. Martin, of Overland Park, Kansas. There were no other appearances.

ISSUES

- (1) Whether or not claimant sustained personal injuries by accident or occupational disease arising out of and in the course of her employment.
- (2) Whether claimant is entitled to medical treatment at the expense of respondent and its insurance carrier.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- (1) The Appeals Board finds that claimant has proved by a preponderance of the credible evidence she sustained personal injury by accident or occupational disease arising out of and in the course of her employment with the respondent for which she is entitled to medical treatment at the respondent's expense.

Claimant has testified to exposure to a black dust and certain chemicals in the course of her employment, Colgate Palmolive Company. She is here claiming pulmonary condition resulting from that exposure. Although a number of medical reports and records are admitted at the preliminary hearing, most do not directly address questions concerning cause of claimant's condition. It is true, as the respondent points out, that Dr. O'Mailey has completed a "physician's report blank" which notes only "pimple in nose." The form also indicates she is able to resume work. That form, however, provides very little information from which one could draw a conclusion regarding the lung condition claimant has described in her testimony. It is also true, as respondent's attorney has pointed out, that Dr. Romaker stated in November of 1992 that her claimant's lung function was "really quite good" and that she does not "qualify for disability for this condition." Dr. Romaker also, however, recommended the wearing of a mask while in the course of her work. She gives several possible diagnoses as to the condition. She does not, however, at any point directly address whether any one of those may be caused by claimant's exposure to dust, fumes or chemicals at work. The statement that she is not entitled to disability is too general to be helpful in this decision. The statement does not explain what type of disability is referred to or why she is not eligible.

Dr. Lem is, in fact, the only medical expert providing any discussion or explanation regarding possible cause of claimant's condition. He states that he believes the exposure to various substances at work could be causing her symptoms. He indicates there is good supporting evidence that claimant has a form of occupational asthma. From his report, combined with the claimant's testimony relating to her condition, convinces the Appeals Board that, at least on a Preliminary Order basis, claimant has established her entitlement to medical treatment. Dr. Lem has been treating claimant and has recommended certain additional medical treatment. The Appeals Board does, therefore, specifically order that treatment be provided at the direction of Dr. Lem.

IT IS SO ORDERED.

Dated this _____ day of March, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Leah Brown Burkhead, 6700 Squibb Road, Suite 103, Mission, Kansas 66202
James E. Martin, 7101 College Blvd, Suite 200, Overland Park, Kansas 66212
Alvin E. Witwer, Administrative Law Judge
George Gomez, Director